

United States Government

NATIONAL LABOR RELATIONS BOARD

Region 11

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June 30, 2005

Re: Adelphia Communications
Case No. 11-RD-673

Mr. George Bradley Hearn
833 Bassett Heights Road
Bassett, VA 24055

Dear Mr. Hearn:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, it appears that further proceedings on the petition are not warranted at this time. In Williams Enterprises, 312 NLRB 937, 939 (1993), the Board stated that “[i]n cases involving unfair labor practices other than a general refusal to bargain, the Board has identified several factors as relevant to determining whether a causal relationship exists between the unremedied unfair labor practices and the subsequent expression of employee disaffection with an incumbent union. These factors include: (1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the Union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the Union.” Master Slack Corp., 271 NLRB 78, 84 (1984). See also Olson Bodies, 206 NLRB 779 (1973).

On December 16, 2004, Communications Workers of America, District 2, filed the charge in Case No. 11- CA-20589 and on April 5, 2005 the Union filed the charge in Case No. 11-CA-20718. An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued in those cases on April 28, 2005, alleging that the Employer violated Section 8(a)(1) and (5) of the Act by unilaterally ceasing the payment of collection bonuses, quality control accuracy incentives, and extra maintenance incentives since on or about November, 2004 and by unilaterally ceasing payment of step pay increases to bargaining unit employees since January, 2005. The Consolidated Complaint further alleged two other unilateral changes regarding changes to employees’ anniversary date for step increases and the Employer’s refusal to allow employees to attend step two grievance meetings.

Thereafter, on June 1, 2005 I approved a Settlement Agreement in those cases which provided for the payment of \$5309.14 in backpay to 17 of the 18 employees in the bargaining unit for lost

bonuses, and the restoration of three paid days off to all 18 employees in the bargaining unit for lost incentive time off awards. Additionally, two employees received backpay for step increases they were denied. Finally, the Settlement Agreement called for the posting of a Notice to Employees.

The instant petition was filed on June 6, 2005, prior to the implementation of the terms of the Settlement Agreement. The showing of interest in support of the petition was obtained on June 2, 2005.

It is clear from the above that the nature of the unfair labor practices settled by the Employer would cause employees to disaffect from the Union. Specifically, a relatively short period of time elapsed between the Employer's cessation of certain bonus, incentive and step increase payments and the filing of the instant petition. Every member of the bargaining unit was affected by the Employer's conduct and because the conduct involved the wages and benefits of all employees, such would clearly have a detrimental and lasting effect on the employees until the conduct was remedied. The reduction of employees' pay would also have a tendency to cause employee disaffection from the Union and have a negative affect on employee morale and membership in the Union. This matter is distinguishable from the Board's decision in Saint Gobain Abrasives, Inc., 342 NLRB No. 39 (2004), in which the Board remanded the Regional Director's dismissal of a decertification petition for a hearing on whether a causal nexus existed between a single unilateral change on a single subject and the employees' disaffection from the union. There was no evidence in that case concerning, among other things, how many employees the change affected and what the cost of the change was to employees. Here, there were numerous unilateral changes affecting every employee in the bargaining unit and the nature of the unilateral changes resulted in a loss of pay and /or incentive time off awards for all of the employees.

In addition, in Columbia Portland Cement Co., 303 NLRB 880 (1991), the Board found that an employer's prior unfair labor practices, which had not been remedied, tainted the employees' petition. In the underlying proceeding, the Board had concluded that Columbia committed numerous unfair labor practices between 1984 to 1987, including, inter alia, directly dealing with employees, discharging or suspending employees for having participated in an unfair labor practice strike, and refusing to bargain with the Union.¹ The Board ordered the Employer to make whole the unlawfully discharged or suspended employees and to offer reinstatement to such employees. Thereafter, the employees submitted the petition in 1988. Noting that Columbia had taken no steps to comply with the Board's Order, the Board ruled that most likely the unremedied unfair labor practices, of the extent and seriousness involved, undermined the union's authority and influenced the employees to reject the union as their bargaining representative. Here, although the nature of the violations is different, for the reasons set forth above, the impact of the unremedied unfair labor practices would similarly undermine the Union's authority and cause employees to reject the Union.

Finally, the settlement in Cases Nos. 11-CA-20589 and 11-CA-20718 also warrants the dismissal of this decertification petition. In Douglas-Randall, Inc., 320 NLRB 431 (1995) the Board ruled that an Employer's agreement to settle outstanding unfair labor practice charges and complaints

¹ See Columbia Portland Cement Co., 294 NLRB 410 (1989).

by recognizing and bargaining with a union will require final dismissal, without provision for reinstatement, of a decertification petition filed subsequent to the onset of the alleged unlawful conduct. Because the settlement agreement approved by the Regional Director requires the Employer to bargain with the Union prior to any changes in terms and conditions of employment, and the instant petition was filed subsequent to the onset of alleged unlawful conduct, the Board's ruling in Douglas-Randall requires dismissal of the petition on these additional grounds.

The instant matter is distinguishable from The BOC Group, Inc., 323 NLRB 1100 (1997) in which the Board did not affirm the Regional Director's dismissal of a decertification petition based upon Douglas-Randall. The Board found that a single unilateral change in compensating employees for attending company meetings was not the type of unfair labor practice which would preclude a question concerning representation under Douglas-Randall. Although no affirmative bargaining order was included in the instant settlement agreement, because the Employer's unilateral changes affected every employee in the bargaining unit and directly affected every employees wages and benefits, the numerous unfair labor practices remedied by the instant settlement agreement are clearly ones whose affect would preclude a question concerning representation.

Accordingly, for all of the reasons set forth above, I am dismissing this petition.

Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing a request therefor with the National Labor Relations Board, addressed to the Executive Secretary, National Labor Relations Board, Washington, D.C., 20570. A copy of such request for review must be served on the Regional Director and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review (*eight copies*) must be received by the Executive Secretary of the Board in Washington, D.C., by the close of business at 5:00 p.m. EST (EDT) on **July 14, 2005**. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C., and a copy of any such request for extension of time should be submitted to the Regional Director, and to each of the other parties to this proceeding.

The request for review and any request for extension of time for filing must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding, and the copy must be served in the same or faster manner as that utilized in filing the request with the Board. When filing with the Board is accomplished by personal service,

however, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph.

Very truly yours,

/s/ Willie L. Clark, Jr.
Willie L. Clark, Jr.
Regional Director

HDN/jj

cc:

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